Supreme Court, U.S.
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No. 97-139

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

H. BEATTY CHADWICK,

Petitioner,

v.

R.D. ANDREWS, SUCCESSOR TO GEORGE HILL, WARDEN, DELAWARE COUNTY PRISON,

Respondent,

and

BARBARA JEAN CROWTHER CHADWICK,

Respondent.

On Petition for Writ of Certiorari to the Superior Court of Pennsylvania

BRIEF IN OPPOSITION FOR RESPONDENT BARBARA JEAN CROWTHER CHADWICK

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17 pp

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Do the Sixth and Fourteenth Amendments to the United States Constitution require that a jury trial and other rights afforded to a criminally accused be provided to a civil contemnor who, as a result of his civil contempt, is incarcerated for the sole purpose of coercing him into compliance with the court order?

2. Does the Eighth Amendment to the United States Constitution, by virtue of the Fourteenth Amendment, prohibit a state court from incarcerating a civil contemnor for an indefinite period of time where the sole purpose of the imprisonment is to coerce the contemnor into complying with a court order with which he is fully able to comply?

3. Does the Fourteenth Amendment to the United States Constitution prohibit a state court from imprisoning a civil contemnor who fails and refuses to comply with a court order, despite his ability to do so, where the contemnor received notice of the order with which he was required to comply, and refused to appear at multiple hearings on the issue of his compliance with the order despite having notice of those hearings?

4. Does the Fourteenth Amendment to the United States Constitution prohibit a state court from adjudicating a person in civil contempt of a court order, which is not a final order and which, pursuant to the state rules of appellate procedure, is not appealable?

TABLE OF CONTENTS

Page

COUNTER-STATEMENT OF QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

COUNTER-STATEMENT OF THE CASE 1

ARGUMENT 7

A. The Sixth Amendment to the United States Constitution, which provides that an accused in a criminal proceeding is entitled to, *inter alia*, a jury trial, does not apply to cases of civil contempt in which the contemnor is imprisoned for failure and refusal to comply with a court order. 7

B. Husband's continued incarceration for failure and refusal to comply with the July 22, 1994 Order does not violate the Eighth Amendment since the purpose of the incarceration is to coerce Husband into compliance with the Order. 9

C. Husband's continued incarceration for his failure and refusal to comply with the July 22, 1994 Order does not violate any rights secured by the Fourteenth Amendment to the United States Constitution. 10

D. The trial court did not violate any rights secured under the Fourteenth Amendment by adjudicating Husband in contempt of the July 22, 1994 Order which was interlocutory and not appealable under the Pennsylvania Rules of Appellate Procedure. 12

CONCLUSION 13

TABLE OF AUTHORITIES

Page

United States Supreme Court Cases

Austin v. United States, 509 U.S. 602 (1993) 9

Bloom v. State of Illinois, 391 U.S. 194 (1968) 8

Fong Yue Ting v. United States, 149 U.S. 698 (1893) 10

Harris v. United States, 382 U.S. 162 (1965) 8

Ingraham, et al. v. Wright, et al., 430 U.S. 651 (1977) 9

Shillitani v. United States, 384 U.S. 364 (1966) 7, 8

United Mine Workers of America v. Bagwell, 512 U.S. 821 (1994) 8

Uphaus v. Wyman, 360 U.S. 72 (1959) 10

Constitution

United States Constitution, Sixth Amendment 7

United States Constitution, Eighth Amendment 9

United States Constitution, Fourteenth Amendment 10

Rules

Pa. R.A.P. 341(a) 12

Pa. R.A.P. 341(b)(1) 12

COUNTER-STATEMENT OF CASE

Petitioner, H. Beatty Chadwick (hereinafter "Husband"), is currently incarcerated in the Delaware County Prison after being adjudicated in civil contempt of a July 22, 1994 Order entered by the Honorable Joseph T. Labrum, Jr. of the Delaware County Court of Common Pleas of the Commonwealth of Pennsylvania. Judge Labrum's July 22, 1994 Order was entered in connection with a divorce action initiated by Respondent Barbara Jean Crowther Chadwick (hereinafter "Wife"), which action is pending in the Court of Common Pleas of Delaware County. The Order directed Husband to, *inter alia,* return to an account under the jurisdiction of the court approximately $2.5 million in marital assets that he had fraudulently transferred outside the United States in an attempt to defeat Wife's economic claims under the Pennsylvania Divorce Code, 23 Pa. C.S.A. § 3101, *et seq.*

Briefly, by way of background, Husband's fraudulent scheme began immediately prior to a support conference scheduled in February 1993 in connection with the divorce action. At the conference, Husband represented that he had transferred $2,502,000 of marital assets titled in his name (including $896,106 from an individual retirement account) to purportedly satisfy an alleged debt with a Gibraltar partnership known as Maison Blanche Limited with which he claimed to have entered into a joint venture agreement in August 1990. The $2,502,000 transferred by Husband represented the bulk of the parties' marital estate. Throughout various hearings in the divorce action, Husband maintained that the $2,502,000 had been transferred in satisfaction of a valid debt and that he no longer had any control over the money.

In order to protect her right to equitable distribution, and after Wife had filed an action in Gibraltar which resulted in an Order compelling the principals of Maison Blanche to reveal the whereabouts of the funds transferred from Husband, Wife filed in the Delaware County divorce action an Emergency Petition to Freeze Marital Assets which included an Affidavit from one of the principals of Maison Blanche Limited which disclosed the return of the $896,106 to the United States to an account in the name of "H.B. Chadwick." The Affidavit fur-

ther revealed that $995,726.41 was sent from Gibraltar to Union Bank of Switzerland (Luxembourg) and that Maison Blanche no longer had any control over those funds. Finally, the Affidavit indicated that some $550,000 in stocks which Husband claimed to have transferred to an acquaintance in England was never sent to Gibraltar. After a hearing on Wife's Emergency Petition on April 29, 1994, and after considering the Affidavit, the Honorable Kenneth A. Clouse of the Delaware County Court of Common Pleas entered an Order directing a freeze of any funds that were located and the full disclosure by the financial institutions that were identified in the Affidavit.

Wife obtained documentation from the various financial institutions and a further hearing was held on July 22, 1994 before the Honorable Joseph T. Labrum of the Delaware County Court of Common Pleas at which time both Husband and Wife testified. At the July 22, 1994 hearing, Wife clearly established that Husband had fraudulently transferred the marital assets and retained control over these assets. For example, Wife presented evidence that, less than 60 days after the initial transfer of the $2.5 million to Maison Blanche, $869,106 was returned to the United States to an account at Chemical Bank in New York for the benefit of "H.B. Chadwick." Additionally, Wife established that less than three (3) months after the initial transfer to Maison Blanche, Husband purchased three (3) insurance annuity contracts with the $869,106 that had been returned to the United States into an account in his name at Chemical Bank in New York.

Wife also established at the hearing that in May 1994, only days after the entry of the Order by Judge Clouse on April 29, 1994 which enjoined Husband from "further assigning, concealing, secreting or dissipating marital assets," Husband had redeemed the three insurance annuity contracts and directed that the funds be returned to him at a post office box in Shiresmantown, Pennsylvania, which happened to be the hometown of Husband's then girlfriend. Subsequently, these funds were deposited in Banco Mercantil del Istmo in Panama. Although Husband denied that he had requested and authorized the liquidation of his annuity contracts, his signa-

ture on at least one of the letters requesting such liquidation had been guaranteed on two separate occasions by an employee of PNC Bank who positively identified Husband as the individual who had asked for the signature guarantee.

At the conclusion of the July 22, 1994 hearing, Judge Labrum entered an Order which stated:

> Within twenty-four hours of the entry of this order, H. Beatty Chadwick is to return the $2.5 million dollars that he transferred out of the United States in February, 1993 to an account under the jurisdiction of this Court, to be held in escrow by counsel for Barbara Jean Crowther Chadwick and counsel for H. Beatty Chadwick pending further order of this Court. . . . Husband is directed to pay forthwith on account of wife's counsel fees and costs the amount of $75,000.00. . . . Husband is directed to surrender his passport to this Court pending further order of this Court.

Husband attempted to appeal this Order to the Superior Court of Pennsylvania, but the appeal was quashed as interlocutory.[1]

Husband failed to comply with the July 22, 1994 Order and Wife filed a Petition for Contempt. A series of contempt hearings were scheduled on August 29, 1994; October 18, 1994; and October 31, 1994. Despite notice of these hearings and even after service of a subpoena requiring his appearance at the October 31, 1994 hearing, Husband failed to attend any of the proceedings. On October 31, 1994, the Court found Husband in contempt of the July 22, 1994 Order. On November 2, 1994, Judge Labrum directed that Husband be apprehended and incarcerated until he complied with the July 22, 1994 Order. After entry of the November 2, 1994 Order, Hus-

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1. It should be noted that Husband mistakenly refers to the July 22, 1994 and the October 31, 1994 Orders as attempts by the court to use its contempt powers to "collect" money from Husband. Again, the July 22, 1994 and October 31, 1994 Orders do not require Husband to *pay* money as if he had been fined. Rather, they require Husband to *return* money ($2.5 million in marital assets) which he fraudulently transferred outside the United States.

band fled the jurisdiction of Pennsylvania and avoided apprehension by taking up residence in the State of Delaware. Husband was finally apprehended by sheriffs after a violent struggle and has been incarcerated in the Delaware County Prison since April 5, 1995. Just prior to his arrest, Husband filed with the trial court a Petition to Vacate the November 2, 1994 Order, which was denied by the court on April 21, 1995. Husband appealed the April 21, 1995 Order to the Superior Court of Pennsylvania, as further discussed below.

After filing two unsuccessful Petitions for Writ of Habeas Corpus, Husband filed a third Petition for Writ of Habeas Corpus which was denied by the Honorable Joseph F. Battle by Opinion and Order dated September 20, 1995. In his Opinion and Order, Judge Battle specifically found that Husband's alleged payment of a debt to the company in Gibraltar was "merely a sham designed to mislead the Court and deprive [Wife] to her right of equitable distribution of martial property[,]" and that it was "abundantly clear that [Husband] still has control over the disputed marital funds and certainly has the ability to comply with Judge Labrum's July 22, 1994 order."

Husband's fourth Petition for Writ of Habeas Corpus was presented to Judge Battle on October 5, 1995. After the hearing, Judge Battle entered an Order denying Husband's Petition for Writ of Habeas Corpus. On October 30, 1995, Judge Battle issued an Opinion with respect to the Court's Orders of September 20, 1995 and October 5, 1995 which denied Husband's third and fourth Petitions for Habeas Corpus, respectively. The October 30, 1995 Opinion incorporated the Court's Orders and Opinions entered September 20, 1995; April 21, 1995; November 2, 1994; and July 22, 1994. Among other things, Judge Battle reiterated the court's previous determination that Husband was attempting to "fraudulently thwart" Wife's right to economic claims and that the testimony of Husband presented at the hearing on his third Petition for Writ of Habeas Corpus lacked credibility. Husband appealed the October 5, 1995 Order.

At each hearing on Husband's Petitions for Writ of Habeas Corpus, Husband was afforded the opportunity to

comply with the July 22, 1994 Order or to demonstrate that compliance was impossible. Husband never presented any credible evidence and, in fact, continued to refuse to even acknowledge the overwhelming evidence of Husband's fraudulent conduct presented by Wife at the prior hearings, evidence which clearly showed that Husband had a clear ability to comply with the trial court's July 22, 1994 Order.

Husband's appeals of the April 21, 1995 Order and the October 5, 1995 Order were consolidated before the Superior Court of Pennsylvania and oral argument was held on May 14, 1996. By Order and Memorandum dated August 22, 1996, the Superior Court of Pennsylvania affirmed the trial court's Orders. Husband filed a Petition for Allowance of Appeal of the August 22, 1996 decision which was denied by the Supreme Court of Pennsylvania on April 8, 1997.

Husband filed a sixth Petition for Writ of Habeas Corpus in the Court of Common Pleas of Delaware County requesting his immediate release from prison. Following hearings on May 30, 1996 and June 3, 1996, the trial court denied the Petition on June 21, 1996. Husband appealed the June 21, 1996 Order and the Superior Court of Pennsylvania affirmed the decision on April 23, 1997. In its opinion, the Superior Court specifically invited the Supreme Court of Pennsylvania to review its decision and the issues raised in Husband's appeal.[2]

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2. In his appeal, Husband argued that his release was required since he believed his continued incarceration had become punitive rather than coercive. Husband asserted that because there was no "realistic possibility" that he would ever comply with the July 22, 1994 Order, his release was mandated. In its opinion affirming the trial court's denial of Husband's Petition for Writ of Habeas Corpus, the Superior Court specifically invited the Supreme Court of Pennsylvania to review its decision and address Husband's argument, stating,

> [Husband] admits that no court in this jurisdiction has adopted [the 'realistic possibility'] test and we will not do so here. While it seems reasonable that at some point a temporal benchmark should be adopted to determine when contempt incarceration becomes impermissibly punitive we think that it is for our high court to made such a determination.

The court noted that "[e]ven if such a test was (sic) adopted, [Husband's] claim would still fail."

However, Husband chose not to file a Petition for Allowance of Appeal with the Pennsylvania Supreme Court.[3]

On or about September 23, 1996, Husband filed a Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Pennsylvania. On November 1, 1996, Chief Magistrate Judge Richard A. Powers, III issued a Report and Recommendation dismissing Husband's Petition due to his failure to exhaust state court remedies. Husband filed objections to the Report and Recommendation and, on January 16, 1997, an Order was entered by the Honorable Norma L. Shapiro adopting the Report and Recommendation and dismissing Husband's Petition for Writ of Habeas Corpus. Husband filed a Petition for Reconsideration and on May 23, 1997, Judge Shapiro denied this petition. In her May 23, 1997 Order, Judge Shapiro specifically referred to the Superior Court's April 23, 1997 invitation to the Supreme Court to review the decision. Judge Shapiro again determined that Husband had failed to exhaust his state court remedies because he had not, at that time, filed a Petition for Allowance of Appeal with the Supreme Court.

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3. Husband's claim that his failure to file a Petition for Allowance of Appeal was due, in part, to the exhaustion of funds for counsel fees is ludicrous. Aside from the fact that he presently has control over $2.5 million in marital assets, Husband, who is himself a lawyer, has been representing himself, filing one petition after another, and filed the prior petition for allowance of appeal *pro se*.

ARGUMENT

The Petition for Writ of Certiorari does not present any issue warranting review by this Court. Husband purports to raise constitutional objections to his incarceration on the basis that such incarceration is in violation of the Sixth, Eighth and Fourteenth Amendments to the United States Constitution. With respect to these issues, the law is clear and well established, and there is no issue presented worthy of the exercise of this Court's discretion. The decision of the Superior Court of Pennsylvania is consistent with the decisions of this Court and properly applies the law. Moreover, Husband has failed to exhaust his state court remedies and to allow the Pennsylvania Supreme Court the opportunity to rule on these issues.

A. The Sixth Amendment to the United States Constitution, which provides that an accused in a criminal proceeding is entitled to, *inter alia*, a jury trial, does not apply to cases of civil contempt in which the contemnor is imprisoned for failure and refusal to comply with a court order.

Husband claims that as a civil contemnor, who is refusing to comply with a court order, he should be afforded the same protections provided to an accused in criminal proceedings, specifically those under the Sixth Amendment. Because the Sixth Amendment applies only to criminal actions, it is not applicable to this case.

The Sixth Amendment provides, in part: "In all *criminal prosecutions*, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." U.S. CONST. amend. VI. Husband has argued to the various courts involved in this case, and is attempting to represent to this Court, that his imprisonment is a criminal sanction and that, therefore, he should be afforded the same protections provided to an accused in a criminal action. The law is clear that where a sentence of imprisonment is a result of civil contempt and it is conditional in nature, indictment and jury trial are not constitutionally required. *Shillitani v. United States*, 384 U.S. 364, 365 (1966). As noted by this Court in *Shillitani*, it is not the fact of punishment, but rather its character and purpose that serve to

distinguish civil contempt from criminal contempt. *Id.* at 369 (citing *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911). "There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Id.* at 370. Thus, it is the conditional nature of the imprisonment, which is based entirely upon the contemnor's continued defiance, that justifies holding civil contempt proceedings without the need for indictment and jury. *Id.* at 370-71.

In his Petition, Husband fails to cite any civil contempt case that supports his position; rather, he relies exclusively upon criminal contempt cases: *Bloom v. State of Illinois*, 391 U.S. 194 (1968); *Harris v. United States*, 382 U.S. 162 (1965); *United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994). One of the many misrepresentations Husband presents in his Petition is that through its decision in *United Mine Workers*, this Court extended the law so as to provide a civil contemnor with the same rights provided to a criminal contemnor, *e.g.*, a jury trial. Husband suggests that in *United Mine Workers*, the "contmept (sic) was called civil, and involved a substantial fine." This is a complete misstatement. In *United Mine Workers*, this Court specifically stated: "We conclude that the serious contempt fines imposed here were *criminal* and constitutionally could not be imposed absent a jury trial." 512 U.S. at ____, 129 L.Ed. at 659 (emphasis added).

Moreover, in *United Mine Workers*, this Court took great pains to explain the distinction between civil and criminal contempt.

> Criminal contempt is a crime in the ordinary sense . . . and criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings. . . . *In contrast*, civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. *Neither a jury trial nor proof beyond a reasonable doubt is required.*

Id. at ____; 129 L.Ed. at 650 (emphasis added).

It is clear that Husband's confinement is a civil contempt sanction and there is no requirement that he be afforded a jury trial or any other rights available to an accused in a criminal proceeding. Husband's confinement is not "punishment." The trial court has determined, after reviewing all of the evidence presented to it, that Husband fraudulently transferred $2.5 million in marital assets in order to thwart Wife's economic claims associated with the divorce. The trial court further determined that Husband has had, at all times, control over the funds and the ability to comply with the July 22, 1994 Order requiring him to return these assets. The provisions of the Sixth Amendment are inapplicable to this case and cannot serve as a basis for jurisdiction by this Court.

B. Husband's continued incarceration for failure and refusal to comply with the July 22, 1994 Order does not violate the Eighth Amendment since the purpose of the incarceration is to coerce Husband into compliance with the Order.

Husband's claim that his continued imprisonment for failure to comply with a court order should be limited by provisions of the Eighth Amendment is similarly unsupported by well established law. Once again, the determinative factor with respect to this issue is the purpose served by Husband's incarceration. Because Husband's incarceration is for coercive purposes, and not "punishment," the Eighth Amendment is not implicated and his incarceration cannot be considered "cruel and unusual punishment." *Austin v. United States,* 509 U.S. 602, 610 (1993).

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. As recognized by this Court, "An examination of the history of the Amendment and the decisions of this Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those convicted of crimes." *Ingraham, et al. v. Wright, et al.,* 430 U.S. 651, 664 (1977). In the few cases where this Court has addressed the issue of whether the cruel and unusual punishment prohibition provided for in the Eighth Amendment is applicable to civil rem-

edies, the Court has easily found the Eighth Amendment inapplicable. *See, e.g., Uphaus v. Wyman,* 360 U.S. 72 (1959) (holding that incarceration of civil contemnor pending compliance with subpoena is not subject to the Eighth Amendment); *Fong Yue Ting v. United States,* 149 U.S. 698 (1893) (holding the Eighth Amendment inapplicable to deportation of aliens since deportation is not a punishment for crime).

The application of the Eighth Amendment to the civil contempt remedy of imprisonment was addressed by this Court in *Uphaus v. Wyman.* In *Uphaus,* the petitioner was confined for his failure and refusal to produce documents called for in subpoenas. Quoting *Green v. United States,* 356 U.S. 165, 197 (1958) (dissenting opinion), this Court explained:

> Before going any further, perhaps it should be emphasized that we are not at all concerned with the power of courts to impose conditional imprisonment for the purpose of compelling a person to obey a valid order. Such coercion, where the defendant carries the keys to freedom in his willingness to comply with the court's directive, is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees.

Id. at 81. On this basis, the *Uphaus* Court specifically stated that if the petitioner continued to disobey the subpoena, his continued incarceration to secure compliance with the subpoena would be constitutionally proper. *Id.* at 82.

The purpose of Husband's incarceration is to coerce his compliance with the July 22, 1994 Order. Husband's incarceration is not punishment and, therefore, the Eighth Amendment is inapplicable to this matter.

C. Husband's continued incarceration for his failure and refusal to comply with the July 22, 1994 Order does not violate any rights secured by the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment to the United States Constitution prohibits a state from depriving a person of life, liberty,

or property without due process of law. Husband has not been deprived of any protected rights without due process of law. Husband's incarceration results solely from his continuing refusal to comply with the July 22, 1994 Order. Husband holds the keys to his jail cell and he can free himself at any time. The procedural history of this case makes clear that Husband has been afforded complete due process of law throughout the lower court proceedings.

As already noted, by Order dated October 31, 1994, Husband was adjudicated in contempt of the July 22, 1994 Order and the trial court ordered his incarceration. Husband appealed the October 31, 1994 Order, and the Superior Court quashed the appeal on the basis that the order was interlocutory. Husband subsequently filed an Emergency Petition for Vacation of Sanctions of Incarceration and Bench Warrant which was denied by the trial court on April 21, 1995. Husband appealed the April 21, 1995 Order, and the Order was affirmed by the Superior Court by Memorandum and Order dated August 22, 1996. On April 8, 1997, the Supreme Court of Pennsylvania denied Husband's Petition for Appeal of the August 22, 1996 Order, and Husband filed the Petition for a Writ of Certiorari presently before this Court. In addition to appealing the April 21, 1995 Order, Husband also filed with the Supreme Court of Pennsylvania a Petition for Writ of Mandamus seeking his release from prison and that Petition was denied by Order dated September 24, 1996.

Further, the October 31, 1994 Order was predicated on Husband's violation of the July 22, 1994 Order. As already noted, the July 22, 1994 Order was entered after a full hearing at which Husband appeared and gave testimony, and the order was served on Husband at the conclusion of the hearing. Prior to the October 31, 1994 adjudication of contempt, three hearings were held in August and October of 1994 concerning Husband's compliance with the July 22, 1994 Order. Despite having notice of all three hearings, and having been served with a subpoena to appear at the October 31, 1994 hearing, Husband failed and refused to attend any of the hearings. Husband was, however, represented by counsel at each of these hearings.

Contrary to Husband's assertion, the July 22, 1994 and the October 31, 1994 Orders were not attempts by the court to use its contempt powers to "collect" money from Husband. The July 22, 1994 and October 31, 1994 Orders do not require Husband to *pay* money as if he had been fined, rather, they require Husband to *return* money ($2.5 million in marital assets) which he fraudulently transferred outside the United States. It was well within the trial court's powers to adjudicate Husband in civil contempt of the July 22, 1994 Order and in doing so, the trial court provided Husband with due process of the law.

D. The trial court did not violate any rights secured under the Fourteenth Amendment by adjudicating Husband in contempt of the July 22, 1994 Order which was interlocutory and not appealable under the Pennsylvania Rules of Appellate Procedure.

In addition, contrary to Husband's assertion, the right to appeal is not a fundamental right. The Pennsylvania Rules of Appellate Procedure permit an appeal as of right to the Superior Court only from a final order of a lower court. Pa. R.A.P. 341(a). "A final order is any order that ... disposes of all claims or of all parties[.]" Pa. R.A.P. 341(b)(1). The July 22, 1994 Order which required, *inter alia*, the return of the $2.5 million in marital assets, was not a final order but rather an interlocutory order and, therefore, non-appealable pursuant to Rule 341 of the Pennsylvania Rules of Appellate Procedure. It was an order properly entered by the trial court pursuant to the court's inherent powers and the powers granted under the Pennsylvania Divorce Code. Husband has not been deprived of his right to appeal a final decision in the divorce action.

Further, between all of Husband's appeals and petitions for writ of habeas corpus, Husband has had the opportunity to contest the validity of the July 22, 1994. Moreover, after Wife established Husband's ability to comply with the July 22, 1994 Order, Husband has been provided with an opportunity to comply with the July 22, 1994 Order and/or to present evi-

dence as to his alleged inability to comply with the Order at each of the subsequent habeas corpus hearings held before the trial court.

Husband was clearly afforded due process of the law as required under the Fourteenth Amendment to the United States Constitution and a grant of *certiorari* on this basis is not warranted.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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